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THE LATE MR. JUSTICE YAHYA ALI.

Madras has lost one more Judge this year. The death of Mr. Yahya Ali, on the 22nd of April last, coming so soon after the death of that popular Judge, Mr. Justice V. Govindarajachari, is shocking in its suddenness. Though it was known for some time past that he was not alright, most of us never dreamt that his end was so near. A most courteous, painstaking and patient judge, he had discharged his onerous duties remarkably well and to the satisfaction of all in spite of his failing health. He had such an even and unruffled temper that it is very doubtful whether at any time he had used any harsh words at all. His judgments were invariably sound and were the result of conscientious attempts to arrive the truth and dispense fair justice. Madras has lost in him not only a good and able judge but also a perfect gentleman of great culture and learning.

REFERENCES IN THE HIGH COURT.

On the 26th of April, before the Chief Justice and other Judges, touching references were made to the passing away of Mr. Justice Yahya Ali.

Mr. V. L. Ethiraj, Public Prosecutor, Madras, in the course of his reference said :

"It is with profound sorrow that I have to bring to your Lordships' notice the sad demise of our beloved Judge, Mr. Yahya Ali. No words could properly express the sterling qualities of that eminent judge ; a keen intellect, great learning, profound human understanding and exquisite courtesy we found in that frail figure, which adorned the High Court Bench for the last four years. It can be said truly of him that he was a great Judge. I ask your Lordships to convey our most profound sympathy to the members of the bereaved family."

Mr. V. C. Gopalaratnam, associating himself on behalf of the members of the Madras Advocates' Association, with the reference made by Mr. V. L. Ethiraj, said :

"I crave your Lordships' permission to associate myself, on behalf of the members of the bar, with the reference just made before your Lordships by the learned Public Prosecutor, to the sad and untimely demise of Mr. Justice Yahya Ali, at his residence, on Friday last, the 22nd of this month. Though His Lordship was not keeping the best of health during the past one year or so, there was absolutely nothing to give us even an inkling that the malady which afflicted him was fatal,

On the depressing and sultry afternoon of Thursday, the 21st of this month, when after a very trying spell of work in Court, he rose and walked to his chambers, we little dreamt that we were seeing that beloved Judge for the last time on earth. Almost to the last prescribed minute, he sat and did his work, with a cheerfulness and sweetness, which succeeded in concealing the great physical suffering and fatigue, which he must surely have felt all through that day and left the Court with a little joke on his lips as usual. His death, following so closely on that of the late Mr. Justice Govindarajachari, has deprived our Province of yet another great and astute Judge, and made the void on the Bench of its High Court, larger and harder to fill.

Mr. Justice Yahya Ali was born in August 1893 in a respectable middle class family of Nellore and his father was a worthy gentleman who served the Nizam of Hyderabad as Assistant Secretary in the Finance Department. Endowed with more than average intelligence and industry, he quickly got through his early years of education and joined the Presidency College, Madras, from where he graduated in History and Economics in 1916. He took the Law Degree in his stride and after getting qualified as a full fledged Lawyer set up practice in his own place, Nellore, where he soon made his mark as an able and conscientious vakil. By dint of hard work and sheer merit, he attained the Public Prosecutorship and Government Pleadership of Nellore District and held those offices for a decade and more with credit and distinction. He was also at the same time, taking a prominent part in Politics, as a member of the old Legislative Council.

Some years later, a most momentous event happened in the life of the late Judge which had far reaching consequences and verily gave a new and distinct shape to his future career. He was appointed a District Judge in 1926 and his thorough and conscientious work as a District Judge, and the great popularity he won in the successive Districts to which he was posted, Cuddappah, East Godavary, Anantapur, and Madura, are too well known to need mention. In January 1942, his exceptional merits were recognised by the Central Government, who appointed him the Chairman of the Appellate Income-tax Tribunal. His work on that Tribunal not only served to equip him with a thorough and exhaustive knowledge of Income-tax Law and Procedure, but also to build up a tradition of independent and judicial outlook for that Tribunal which his successors are maintaining and enriching to this day.

In March, 1945, Mr. Yahya Ali was appointed to act as a Judge of the High Court and his advent and stay here have verily been the inevitable success which they were destined and bound to be. Within a very short time, he endeared himself to one and all, practitioners and members of the public alike, by his charming manners, and superior ability and he was finally confirmed in July, 1948.

During the tenure of his high office Mr. Justice Yahya Ali revealed an astounding degree of familiarity with a variety of subjects. He was equally at home, whether presiding in the Admission Court, or on the Criminal Bench, whether disposing of First Appeals or Original Suits ; while he liked to study and analyse precedents reported in the volumes of the Law Reports quoted before him, he always preferred to rest his decisions, if possible, on first principles and logical reasoning.

My Lords, it was mostly on the Original Side that his work lay, during the course of the last one year and more of his judicial career. It will be no exaggeration at all, if I say, and I do say it in all sincerity—that every member of the bar, practising on the Original Side, looked upon him as a kind friend and cheerful guide. He was ever-sweet and smiling, overflowing with the milk of human kindness and rarely did he speak a harsh or cruel word. He was a Judge who encouraged sobriety in statements and one more often succeeded before him by a slight understatement of his case than otherwise.

He had an inexhaustible fund of wit and subtle humour, great qualities in a Judge, which are of inestimable value in his work. Extravagant statements or

specious arguments were easily broken down by a mere witty remark or humorous gesture from him and a balanced outlook and sense of proportion would thereupon easily begin to prevail. His voice was never raised in discourtesy or anger and even the severest of his orders were passed in a tone just audible to Counsel in their seats. He was a great student of human nature and human conduct, rarely, if ever mistaken in his conclusions of fact. His tone and demeanour, invited confidences from the Counsel appearing before him, who readily made concessions in respect of their cases, which they might not have so readily made in the usual course.

He cherished the highest respect and affection for the bar and would never allow anyone to bring down its prestige or privileges. Statements made by practitioners before him were always accepted readily at face value by him and no member of the bar had occasion at any time to feel a personal grievance against him. He was generous but ever just in remunerating the Receivers and Commissioners appointed by him for the services rendered by them to the Court.

The dignity and majesty of the law ever found in him a strong and powerful champion and protector. He could never tolerate disobedience to orders of Court or light-hearted disregard of its directions. His firmness either invariably extracted the fullest repentance and reparation from the erring person, or visited on him the most deterrent punishment, in either case, completely vindicating the authority and dignity of the Court and the Law.

The late Mr. Yahya Ali was also deeply imbued with the spirit of service to his fellowmen which found scope in the earlier years of his legal career in the substantial work he did as the Chairman of the Nellore Municipality for more than one term successively. That this was possible in a place where communal tension had existed for several decades between Hindus and Muslims and where Hindus predominated very largely, only goes to show the high esteem and respect in which he was held by members of both the communities and his complete freedom from any bias or prejudice based on creed or community. He was a fervid patriot and felt and acted as an Indian first and last. He had at the same time a deep and abiding faith in God and Religion and continued to function till his death as the Mutawalli of the Teynampet Mosque in which his ancestors and family were deeply interested and in the sacred precincts of which he has found his last resting place.

By nature he was reserved and retiring and never obtruded his views or person anywhere. He disliked noise and publicity and avoided crowds but he was always sought after by his many friends and admirers who enjoyed his crisp conversation and incisive wit. He attached great value to old cherished contacts and friendships. He treated the members of the High Court staff with whom he came in contact, with a courtesy and consideration which evoked their grateful appreciation.

My Lords, by the death of Mr. Justice Yahya Ali, we have not only lost a distinguished and human Judge, but a great gentleman. We can only mourn his loss and pray to the Almighty whose inscrutable decree has taken him away from us to bestow on his pure and noble soul His Eternal Peace and everlasting Bliss.

I request Your Lordships to convey to Mrs. Yahya Ali and her family the respectful condolences of the Madras Bar in their great and irreparable loss."

REFERENCE BY HIS LORDSHIP THE CHIEF JUSTICE MR. P. V. RAJAMANNAR.

"It is a most melancholy duty that within a few months after the passing away of our brother, Mr. Justice V. Govindarajachari, we should have been compelled to meet again to-day to mourn the death of another brother, Mr. Justice Yahya Ali. Last Thursday, he sent word to me to say that he was not attending

the Judges' meeting that evening, and the next morning he sent another message to the effect that he was too indisposed to attend Court; but I never expected that anything serious would happen in the course of the day. At 6 that evening I was shocked to hear the news on the telephone that our brother had passed away. I knew him well for over 20 years, from the time he was practising at Nellore. Subsequently when he became both Government Pleader and Public Prosecutor at Nellore, I came into closer contact with him. From that time and ever since then, we were very good friends. He was hardly four years on this Bench and during that short period, he had impressed everyone as a good and able Judge.

As a Judge, Mr. Yahya Ali had inestimable qualities. He had patience, abundant commonsense and a clear grasp of the fundamental legal principles and a fine intellect. His judgments were characterised always by close reasoning and legal arguments and they had always a sense of form and good literary style. He was particularly proficient in Income-tax Law, having been President of the Income-tax Tribunal and whenever I sat with him to dispose of Income-tax cases I received considerable assistance from him. He was also equally at home in all other branches of law. In Court and outside Court, he was always a perfect gentleman, anxious to hear anyone, always courteous, balanced and considerate. He was a good and a loyal friend and had a keen sense of humour, not of the boisterous type, but of a nice and subtle character, sometimes with a trace of irony. He was a deeply cultured person—culture with the best ingredients of what I may call Moghul culture, urbanity, catholicity and instinctive love of all that was beautiful. He was very fond of Telugu poetry and he was a real *connoisseur*, a patron of learning and art. In his death, we have sustained a great loss and it will be difficult to replace him. Our heartfelt sympathies are with the members of the bereaved family. As a token of our sorrow and as a mark of respect to his memory, the Court will be closed to-day."

SECULAR STATE AND LEGISLATION.[1]

By

Mr. T. R. Venkatarama Sastri.

India is a land of many faiths. We have Hindus, Muslims, Christians, Parsis and Jews. We have Buddhists and Jains. Among the Hindus, there are many denominations, some of which desire to be counted as separate religions. There are denominations, few or many, in other religions also. Each of these sects has its own religious and charitable institutions. With these diversities, India has only two alternatives in organising itself as a State. The Hindus being the large majority of the population, however divided among themselves, India might declare itself to be a Hindu State guaranteeing protection and fair treatment to non-Hindu minorities. Or, it may declare itself to be what has been called a Secular State. Those who desire India to be a Hindu State are not a few. They urge that Pakistan has declared itself an Islamic or Shariat State promising fair treatment to non-Muslims on a similar principle. And they add, not without justification, that Hindu States have in the past been not only tolerant of other faiths but have also in many cases generously endowed them. But we have decided, wisely as it seems to me, to be a Secular State.

One may ask, what is a Secular State? A Secular State does not mean one promoting secularism or irreligion, nor one indifferent to religion. Of the U. S. A., it has been said that its deep attachment to Christianity is due to the severance of religion from State.

The words "Secular State" do not occur in the draft constitution. Nor do they occur in any other of the world's constitutions, as far as I know. The

1. Radio talk published by the courtesy of the All India Radio, Madras.

words have no fixed technical meaning. They are a compendious description of a State scrupulously maintaining a non-interfering attitude towards all religions in the State. This attitude is obvious in the finalised provisions relating to Religion in the Chapter on Fundamental Rights.

The first general provision to note is in Article 8. Existing laws, in so far as they are inconsistent with the Fundamental Rights declared, are to become void, and no future legislation can contravene them. It has a repealing effect on past legislation and a prohibitory effect on future legislation. Every Article declaratory of Rights should be read as prohibitory of legislation affecting them.

Article 19 provides that all persons shall have freedom of conscience and the right to profess, practise and propogate religion. This is enacted in all constitutions. There is to be no compulsory imposition of religion on any one. Article 20 has no corresponding provision in any other constitution. It might have been thought unnecessary in view of the right to form associations or unions, and the right to own property provided in such constitutions, as in our own Article 13. The terms of Article 20 are important :

> Every religious denomination or any section of it has the right to establish and maintain religious and charitable institutions,
>
> to manage its own affairs in religious matters,
>
> to own and acquire property, moveable and immoveable, and
>
> to administer such property in accordance with law.

This Article provides autonomy to each sect in the administration of its endowments. The only limitation on its autonomy, if it could be called a limitation, is to be found in the words "in accordance with law." They imply no doubt that there is a body of laws regulating the management of these public or private trusts. General principles similar to those embodied in the Indian Trusts Act, and principles applied by the Courts of Equity and the usages of institutions govern their management. The Sovereign is protector of all charities. The Advocate-General as representing him can institute a suit to rectify mismanagement either by having the trustee removed and new trustees appointed, or by having a scheme framed for the management of the Trust. Or, two beneficiaries with his sanction may institute such a suit the conduct of which he may assume at any time. The Hindu Religious Endowments Act has substituted the Board of Commissioners for the Advocate-General as regards Hindu Religious Endowments. So far, the jurisdiction of the Civil Courts has not been very seriously curtailed.

In this connection, there are two reservations of power to the Legislature which must be noted. Legislative power is reserved to regulate or restrict the economic, financial, political and other secular activity associated with religious practices. This relates to institutions which carry on business or money-lending and has no relation to the management of trust properties. Sikhism which has a militant origin has connection with politics and Sikhs recently claimed the right to hold political meetings in the Gurudwaras. Such activities cannot escape regulation or restriction, sheltering behind religion. The other reservation is in regard to social welfare and reform. Throwing open public institutions to all classes which is an item of reform has been specifically mentioned on account of its importance. This does not touch Article 20. These reservations are in themselves an indication that the autonomy in respect of the administration of trust properties is not limited except by what is implied by the words "in accordance with law."

Article 20 is general and applies to all religious denominations. What the Legislature cannot do in the case of one denomination, it cannot do in the case of any other,

In this connection, Article 22 may also be considered. It relates to religious instruction in educational institutions. In Government institutions there is to be no religious instruction. But if they administer institutions created by private endowments, they scrupulously respect the donor's direction as to religious instruction. In State-aided institutions, compulsory attendance at religious instruction should not be enforced. In private unaided institutions, the student must submit to their conditions, or not join them at all.

It is not my thesis that the Legislature cannot make laws in relation to these trusts. There may be legislation such as we have in a great part of the Hindu Religious Endowments Act, and in section 92 of the Civil Procedure Code. But the question is whether the Government can take over the religious institutions of all or of any of the communities through or under a department of State. I hold that a department of Government cannot be authorised to take over the management or direct supervision of religious charities. In a Secular State, the ministers may be of different religions. The ministry may include persons with no religious faith at all. The discussion in connection with the Hindu Religious Endowments Bill showed that there were some who were frankly for the destruction of these institutions, and appreciated the Bill as going some way in that direction. That men with anti-religious views should dominate the Government is not beyond the bounds of possibility. There is this difference between the Judiciary and the Executive Government. The Judiciary who administer laws need not be of the denomination of the litigant and may belong even to another religion. Their decisions are subject to appeal. A final Court, the members of which do not belong to the religion of the litigant, may even be appreciated for its impartial approach to the case. But the Executive Government, consisting of people of diverse faiths, whose orders are not subject to appeal to any higher tribunal, cannot assume the management of religious trusts. Either a Secular State means that or it means nothing. To some of those in authority, it means nothing at all, and no limitation of legislative or direct governmental interference is intended by it. Nobody suggests that the Government should helplessly watch the mismanagement of trusts going on under their very eyes. There is their Advocate-General to take steps against mismanagement of religious institutions and their endowments, to whichever community the trusts belong. The setting up of any new agency for taking action when necessary is open to no objection.

The real trouble is that the Executive Government seem to feel that they are as good at deciding any matter impartially as the Courts and there is no need for Courts to examine their action and its legal propriety. They seem sometimes to feel that the Courts are a hindrance in the way of their beneficence. It was only the other day that the Chief Justice of India expounded the relative functions of the legislative, the Executive and the Judicial authorities of the State.

Let us take the Cypres doctrine as now applied to public trusts. "Cypres" has lost its meaning in the mind of the Executive Government. They take all public endowments to be for the benefit of the people and hold that there is no harm in diverting endowments to any new item of public good. Then "Cypres", which means "as near as possible," loses all meaning.

England is no example to a Secular State. It has an established religion and church. The Sovereign and the Chancellor cannot embrace Catholicism and retain their places. The Parliament is a Sovereign Legislature with unlimited powers. No Fundamental Rights limit their powers. But sound policy and good sense have kept them within limits. The institution of Charity Commissioners is about a century old. At first Catholic Charities were outside their jurisdiction. Now it extends to them also. There is clear recognition that the trustees are the sole and responsible administrators of the income and are necessary for the institution of the Commissioners who are to be the judges of all dealings with the capital with supervisory powers, as in our Hindu Religious Endowments Act. Resort to courts

is not taken away there. But resort to Courts has become comparatively rare after the institution of Charity Commissioners with their quasi-judicial functions. The slow growth of tolerance has made England conform as nearly as possible to the ideal of a Secular State, even though it does not profess to be one. A State which has declared itself to be Secular cannot do what has not been done even in England.

MADRAS PREVENTION OF BLACK-MARKETING BILL.

By

MR. T. V. RAJAGOPALAN, ADVOCATE, MADRAS.

The object of this bill is to put down black-marketing in this Province. The statement of objects and reasons mentions that despite the vigilance of the police and the official machinery, black-marketing is rampant. The reasons for this inability to put down black-marketing according to the statement are :—

1. Lack of co-operation of the public, and

2. Absence of clear definition of 'black-marketing'.

This bill therefore defines 'black-marketing' and provides for deterrent punishment in the form of imprisonment, of execution of bonds for good behaviour in the case of a second or subsequent offence, of giving wide publicity to convictions under the Act and of prohibition of offenders in certain cases from carrying on the business or any business similar to it.

No Act can successfully work without public co-operation. No one will deny help to put down black-marketing except those engaged in it. And to the extent the bill provides a deterrent punishment to the black-marketers, it will have the warm approval of the public. But punishment must not be primitively barbarous or revolting or unknown to the ordinary principles of Criminal Law. The offender who is punished in such a way will evoke deep sympathy from the public rather than the opprobrium and scorn richly deserved by him. Such punishments in some measure defeat their own object. Thus the provision for the externment of the offender, the provision for the publicity of his conviction and the provision for enforced publication in papers are novel and to say the least, crude methods of inflicting punishment on the offenders.

Section 3 (1) defines black-marketing. Section 3 (2) provides the punishment for black-marketing. The offender is to be punished by (1) imprisonment, (2) forfeiture, and (3) fine.

As regards (1) except for reasons to be recorded in writing imprisonment of not less than six months must be given and it may extend to six years. It would read better if the wording of this sub-clause is altered into 'Imprisonment for a term which may extend to six years but shall not, except for reasons stated in writing by the Court, be less than six months.'

As regards (3) the fine is unlimited. It would be advisable to fix a maximum limit or to limit it by relating it to the value of the forfeited property. That is to say, the fine may be three hundred and fifty rupees or to the value of the forfeited property whichever is higher.

Section 5 provides for a further punishment for a man who has been convicted 3 times.

Section 5 (*a*) provides that he may be prohibited from carrying on, or being concerned in any manner with any business mentioned in the order, such business being similar in its nature to any of those in relation to which he was convicted ; or he may be allowed to carry on the business only in accordance with any conditions that may be imposed for such period as may be specified. Having regard

to the fact that the punishment given on the previous two occasions has had no effect on him, he is prohibited from carrying on that business or any other similar business. The words ' Similar nature ' may not be easy of precise determination.

In the alternative, he may be externed from his place but not outside the Province under section 5 (*b*). If he is externed from his place, it may not be possible for him to carry on the business at his place but he can do so in the place to which he is externed. If he is not a fit person to carry on a business at his place, why should he be allowed to carry on the business at a new place. Externment except in cases where person's presence is likely to produce a breach of the peace or where there is any other political reason should not be provided as punishment. Section 5 (1) (*b*) must be deleted.

Section 6 and section 7 provide novel punishments. To make a man proclaim in every one of his letters particulars of his conviction is a harassing provision. This is provided in the case of a man who has been found guilty even in the first instance. Having regard to the deterrent punishment provided, this section is wholly unnecessary.

If section 6 is objectionable section 7 is more so. Newspapers can be trusted to publish press-notes by Government and fair summary reports of cases. Why provide compulsory publication. It is not known what past conduct of newspapers makes it necessary to have such a provision. This provision is needless and ought to be deleted.

These punishments are like confinement to stocks, which we have abolished as barbarous and degrading and they are more subtle and refined in their barbarity.

Section 10 provides for the punishment of the members of an association or company when a company is guilty of an offence of black-marketing. The section provides that such persons are punishable unless they prove that they had no knowledge or that they had exercised the diligence to prevent the commission of the offence. It will not be possible to prove a negative thing as " no knowledge " and it is dangerous to presume their knowledge. If on all the facts of a case the Court comes to the conclusion that any such person had knowledge, then he can be punished unless he can show that he exercised all due diligence to prevent its commission.

Section 10 should be modified as follows :—

" Where a person committing any offence punishable under the Act is a company or an association or body of persons . . . . . . every director, manager . . . . shall, if he had knowledge, be deemed guilty of such offence, unless he proves that he exercised all due diligence to prevent its commission."

Section 11 provides for the punishment of an employer where his agent or employee commits the offence. The express or implied permission mentioned in the section is only to act in his behalf and not to commit a breach of the law. The employee is of course punishable. Unless it can be proved that the employer authorised the employee to do an act which has constituted the offence or had knowledge of the transaction, he ought not to be punished at all, particularly with imprisonment.